

(1924) 05 CAL CK 0036

Calcutta High Court

Case No: None

Bijoy Chand Mahatab

APPELLANT

Vs

Nilmoni Lahiri and Others

RESPONDENT

Date of Decision: May 14, 1924

Acts Referred:

- Limitation Act, 1963 - Section 9

Citation: AIR 1925 Cal 1216 : 85 Ind. Cas. 1007

Hon'ble Judges: Suhrawardy, J; Duval, J

Bench: Full Bench

Judgement

Suhrawardy, J.

This appeal involves an important question of limitation, though, in my judgment, not one of great difficulty. The appellant Maharaja had brought a patni held by Defendants Nos. 1 to 4 to sale under Regulation VIII of 1819 for arrears of rent for the first six months of 1321 (B.S.). The putni was sold on the 17th November 1914, and purchased by Defendant No. 5. It was again put up to sale on the 16th November 1916 and purchased by Defendant No. 6. There was a subsequent sale under the regulation and the patni was again sold on the 16th November 1918 and purchased by Defendant No. 7. In the meantime the Defendants Nos. 1 to 4 brought a suit for setting aside the sale of the patni on the 17th November 1914. The sale was set aside by the Subordinate Judge on the 23rd December 1915. Against that decree the Maharaja preferred an appeal which was dismissed by the District Judge on the 5th December 1918. Though" the sale was set aside, the Defendants Nos. 1 to 4 were not put in possession of the patni on account of the subsequent sale of the patni. On the 13th November 1919, the present suit was brought by the plaintiff for recovery of arrears of rent from the Defendants Nos. 1 to 4 and the other purchasers of the putni. The claim as against the Defendants Nos. 1 to 4 consisted of rent for the years 1321 and 1322. Both the Courts below have decreed the plaintiff's claim in so far as it relates to 1322, but have dismissed the suit for rent for

the year 1321 on the ground of limitation. They have held that time should be computed from the date of the decision of the first Court in the suit for setting aside the sale, namely, the 23rd December 1915.

2. It is argued before us that the view taken by the Courts below is wrong and that time should run from 5th December 1918, the date of the decree of the District Judge on appeal. In support of this view reliance has been placed on the case of *Ranee Surno Moyee v. Shooshee Mokhee Burmonia* [1867] 12 M.I.A. 244. That case in my opinion, does not materially help the appellant. The scope of that decision has been explained by the Judicial Committee in the case of *Huro Prashad Roy v. Gopal Das Dutt* [1883] 9 Cal. 255. In *Ranee Surno Moyee's* case [1867] 12 M.I.A. 244, the question that is now before us did not arise as the suit was within time whether the period was calculated from the date of the decree of the first Court or from the date of the decree of the appellate Court. But there are valuable observations in that case, which have been the subject of consideration in numerous cases before the Judicial Committee and the High Courts of India, and which are of great assistance in the determination of the question before us. The sale in that case was that of a patni under Regulation VIII of 1819. It was subsequently set aside in a suit by the patnidar, who was put in possession by virtue of that decree. The zamindar subsequently brought a suit for arrears of rent. The defence was that time ought to be reckoned from the date on which the rent accrued due, and as it was more than three years the suit was barred by limitation. Their Lordships held, that the cause of action remained in suspense till the patni sale was set aside; and further, that when the tenant took possession of the patni, he did so with all the obligations to pay rent. He took back the estate subject to the obligation to pay rent and the particular arrears of rent claimed in that case must be taken to have become due in the year in which the restoration was alleged to have taken place. Applying this principle to the facts of this case, it appears that after 1915 there was no suspension of the cause of action and there was no bar to the plaintiffs bringing a suit for rent. The principle, which in the cases beginning with the case of *Ranee Surno Moyee v. Shooshee Mokhee Burmonia* [1867] 12 M.I.A. 244 has been followed is that the period of limitation has been extended, where there has been a suspension of the cause of action or where the cause of action has accrued not on the date indicated in column 3 of the Schedule to the Indian Limitation Act, but at a subsequent date for no fault of the plaintiff. This view has been clearly expounded by Mukerji, J., in the case of [Janaki Nath Sinha Roy Vs. Sir Bejoy Chand Mahtab Bahadur](#), . The facts of that case are almost indistinguishable from those of the present one. There the sale of the patni was set aside on the 28th May 1910 by the decree of the first Court of that date. The zamindar took it to the appeal Court and the appeal was dismissed on the 2nd May 1912. In the interval, on the 4th October 1910, the plaintiff paid rent to the defendant landlord to prevent further sale under the regulation. He subsequently brought a suit for the refund of the money thus paid to the landlord. The learned Judges held: " Nor can it be suggested that there was since the 14th October 1910

(the date of the decree of the first Court) any period of time when the right of the plaintiff to institute the present suit was suspended by reason of circumstances over which he had no control, so as to entitle him to invoke the aid of the rule laid down by the Judicial Committee." A point, very similar to the present one was decided in the case of *Bejhoy Chand Mahatob v. Tinkari Bannerjee* [1920] 24 C.W.N. 617. There, the sale of the patni was set aside u/s 14 of Regulation VIII of 1819. The suit was brought by the auction-purchaser at the sale for recovery of money paid to the zamindar as rent. The learned Judges held that such a suit brought more than three years after the date of the decree of the first Court setting aside the patni sale, and the last of the payments made on account of rent, is barred by limitation. In my opinion, the principle laid down in that suit, which was one for recovery of rent from the landlord by the purchaser, will equally apply in the suit where the landlord is seeking to recover rent. The question, as to whether time should be counted from the date of the decree of the first Court or of the Appellate Court, is to my mind set at rest by the judgment of the Judicial Committee in the case of *Hukam Chand Boid v. Pirthichand Lal* AIR 1918 P.C. 151. Sir Lawrence Jenkins, in delivering the judgment of the Court, made the following observations: "Whatever may be the theory under other systems of law, under the Indian law and procedure" an original decree is not suspended by presentation of an appeal, nor is its operation interrupted, where the decree on appeal is one of dismissal." In that case the plaintiff brought a suit against the zamindar to recover a certain sum he had paid as purchaser of a patni taluk. The sale of the patni was set aside on the 24th August 1905 by the District Judge. That decree was affirmed by the High Court on the 3rd August 1906. The Judicial Committee, in these circumstances, held that time should run from the 24th August 1905, the date of the decree of the District Judge. The facts may be different, but in principle there is hardly any difference between that case and the present one. The view I have adopted seems to be in consonance with common sense. The appellant should not be allowed to get extension of time by his own act, which did not succeed. After the decree of Subordinate Judge, on the 23rd December 1915, he was entitled to bring a suit for rent. Instead of doing that he preferred an appeal to the District Judge which proved unsuccessful. It is argued that by preferring this appeal to the District Judge the plaintiff's right to bring a suit was suspended and that if he had brought one he would have been met by the defence that the matter was pending litigation. I do not think that this contention is sound. The defendant having himself brought a suit for the setting aside of the sale could not have been heard to say that he was not liable to pay rent till the decision of the appellate Court. In this connexion reference may be made to Section 9 of the Limitation Act which enacts that where time once begins to run it cannot be interrupted.

3. It has been finally argued on the use of the expression " final decree " In some of the judgments of the Judicial Committee, that time ought to run from the last decree in the litigation. We have come across the expression in *Ranee Surno Moyee's* case

[1867] 12 M.I.A. 244. There, the question whether time should run from the first decree or the final decree was not as I have observed, before the Judicial Committee. That expression was used in the sense in which I understand it, namely, the decree that settles the rights of the parties and puts the plaintiff in a position to bring a suit. This seems to be the view of their Lordships, In *Ranjayya Appa Rao v. Bobba Sriramulu* [1904] 27 Mad. 143, the suit was one for rent. The Courts in India held that time should be counted from the end of each fasli year. Under some Madras Regulation it was necessary for the plaintiff to have the rent ascertained. The plaintiff thereupon brought a suit before the Head Assistant Collector for the purpose. An appeal was taken from him to the District Judge, who made some modifications in the decree, and finally the High Court made further variations in the terms of the pottahs to be tendered: and thus by the decree of the High Court, dated the 29th October, 1889, the conditions of the tenancies, including the rates of rent, were finally determined. On these facts, their Lordships observed that they were of opinion that in such cases no arrears were due till the rates of rent were ascertained by the decree of the High Court of the 29th October 1889, and that limitation ran from that date. The true view of the matter is that time runs from the date on which the rights of the party suing are finally settled giving birth to his cause of action and that once it starts running it cannot be stopped by any act which does not bring about any change in those rights. I have no doubt in my mind, that in the present case limitation ran from the date of the Subordinate Judge's decree, namely, the 23rd December 1915. The view taken by the lower Courts is correct and this appeal must be dismissed with costs. The defendants Nos. 1 to 4 will get full costs, while the Defendants Nos. 5, 6 and 7 will get half costs each.

Duval, J.

4. I agree.